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LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 ROBERT THOMSON,

12 Plaintiff,

13 v.

14 TORRANCE POLICE DEPARTMENT  
and THE LOS ANGELES COUNTY  
15 SHERIFF'S DEPARTMENT,

16 Defendants.

CASE NO. CV 11-06154 SJO (JCx)

**DEFENDANT LOS ANGELES  
COUNTY SHERIFF'S  
DEPARTMENT'S NOTICE OF  
MOTION & MOTION FOR  
SUMMARY JUDGMENT;  
MEMORANDUM OF POINTS &  
AUTHORITIES IN SUPPORT  
THEREOF**

[Filed concurrently with LASD  
Separate Statement of Uncontroverted  
Facts & Conclusions of Law;  
Declarations & Exhibits in Support  
Thereof; Proposed Order

MSJ Date: **February 27, 2012**  
Time: 10:00 a.m.  
Crtrm: 1

1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on **February 27, 2012 at 10:00 a.m.**, or as  
3 soon thereafter as the matter can be heard in Courtroom 1 of the above-entitled  
4 court, the Honorable S. James Otero presiding, located at 312 North Spring Street,  
5 Los Angeles, California, 90012. Defendant Los Angeles County Sheriff's  
6 Department ("LASD") will and hereby does move the Court pursuant to Federal  
7 Rule of Civil Procedure 56 for summary judgment or, alternatively, partial summary  
8 judgment on the grounds that there are no triable issues as to any material fact and  
9 that the LASD is entitled to judgment, or alternatively partial summary judgment, as  
10 a matter of law.

11 Specifically, the LASD moves for summary judgment on the following  
12 grounds:

13 1. The LASD's policies and practices in implementing California Penal  
14 Code section 12050 do not violate Plaintiff's constitutional rights.

15 2. The LASD's denial of Plaintiff's application for a concealed weapons  
16 permit did not violate the Second Amendment to the United States Constitution.

17 If for any reason, summary judgment cannot be granted, the LASD moves for  
18 partial summary judgment as to each of the above issues.

19 This motion is based on this Notice of Motion and Motion, the Memorandum  
20 of Points and Authorities, the Separate Statement of Uncontroverted Facts and  
21 Conclusions of Law submitted by the LASD Defendants and the exhibits attached  
22 thereto, and the records, files and papers herein; and on such other matters as may  
23 be presented by the other parties in this matter, and at the time of the hearing.

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27 //

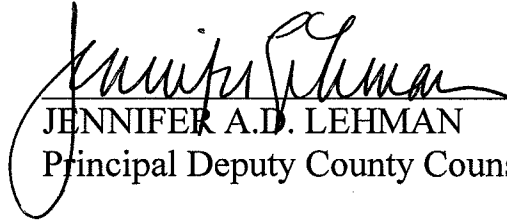
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1 The parties have met and conferred in compliance with Local Rule 7-3. Said  
2 conference took place on October 24, 2011.

3  
4 DATED: December 22, 2011

Respectfully submitted,

5 ANDREA SHERIDAN ORDIN  
6 County Counsel

7  
8 By   
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11 LOS ANGELES COUNTY SHERIFF'S  
12 DEPARTMENT  
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## INTRODUCTION

Plaintiff Robert Thomson claims that he was improperly denied a concealed weapons (CCW) permit by moving Defendant LASD, as well as the Torrance Police Department. Plaintiff alleges that the LASD's definition of good cause, as required by California Penal Code § 12050, violates the Second Amendment of the United States Constitution. Plaintiff's argument is unsupported by the law as there is no constitutional right to carry a concealed firearm in public. It is Defendants, not Plaintiff, who should be entitled to summary judgment.

## STATEMENT OF FACTS

### California's Licensing Laws

California Penal Code § 12050(a)(1)(A) authorizes a county sheriff to issue a license to carry a concealed pistol, revolver, or other firearm capable of being concealed upon the person (hereinafter "CCW permit") upon the existence of good cause, and provided that the applicant meets other criteria provided for in the Penal Code. California is a "*may issue*" state, meaning that law enforcement officials have the discretion to grant or deny a permit based on a number of statutory factors.<sup>1</sup> Penal Code sections 12050 – 12054 set forth the general criteria that California CCW applicants must meet. Applicants must be of good moral character, be a resident of or spend substantial time in the County in which they apply, demonstrate good cause and take a firearms course. (See Penal Code §§ 12050-12054.) The language of Section 12050 is permissive, not mandatory, and gives extremely broad discretion to a sheriff or police chief in issuing concealed weapons licenses — even to individuals who meet the minimum statutory requirements. *Gifford v. City of Los Angeles*, 88 Cal.App.4th 801, 805 (2001) quoting in part, *Nichols v. County of Santa*

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<sup>1</sup>In contrast, "shall issue" states require the issuance of a permit to any person who meets certain minimum requirements.

1 *Clara*, 223 Cal.App.3d 1236, 1241 (1990); *CBS Inc. v. Block*, 42 Cal.3d 646, 655  
2 (1986).

3 **LASD CCW Application Process**

4 Paul Tanaka is the Undersheriff for Los Angeles County. As part of his  
5 responsibilities as Undersheriff, he has been designated to act as the Sheriff's sole  
6 authorized representative for reviewing applications for CCW licenses for the  
7 County of Los Angeles. While members of his staff make recommendations  
8 regarding applications, he is the final decision-maker. (LASD UF 1<sup>2</sup>) As part of his  
9 evaluation of CCW applications, he will review the entire application packet and  
10 any and all supporting documentation. (LASD UF 2)

11 In Los Angeles County, there are four distinct categories of CCW licenses:  
12 Employment, Standard, Judges, and Reserve Police Officers. The Employment  
13 CCW license is issued only to a person who spends a substantial period of time in  
14 his or her principal place of employment or business in Los Angeles County. The  
15 Standard CCW license is issued to residents of Los Angeles County or to residents  
16 of a particular city within Los Angeles County. The Judge CCW license is issued to  
17 California judges, full-time commissioners, and to federal judges and magistrates of  
18 the federal courts. The Reserve Police Officer CCW license may be issued to  
19 reserve police officers appointed pursuant to California Penal Code § 830.6. (LASD  
20 UF 3)

21 If an applicant resides in an incorporated city not policed by the LASD, the  
22 applicant must apply to the chief of police of their city of residence for a concealed  
23 weapons license and have such application acted upon. Within 60 days after a  
24 denial of such application, such city resident may file a separate application with the  
25

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26  
27 <sup>2</sup> The LASD Defendants' Undisputed Facts are contained in its Separate  
28 Statement of Undisputed Facts.

1 LASD, attaching a copy of the application denied by the chief of police. The LASD  
 2 will exercise independent discretion in granting or denying licenses to such person  
 3 but may review, consider, and give weight to the grounds upon which such denial  
 4 was made. (LASD UF 4) As set forth in California Penal Code sections 12050-  
 5 12054, CCW applicants must be of good moral character, be a resident of, or spend  
 6 substantial time in the County they apply in, take a firearms course, and demonstrate  
 7 good cause for the license. (LASD UF 5)

8 **LASD's Good Cause Requirement**

9 The ability of private citizens to carry a concealed weapons is of great  
 10 concern to the LASD. The LASD's overriding policy is that no CCW license should  
 11 be granted merely for the personal convenience of the applicant. No position or job  
 12 application in itself shall constitute good cause for the issuance, or for the denial, of  
 13 a CCW license. (LASD UF 6) The LASD defines "good cause" under California  
 14 Penal Code section 12050 as requiring:

15 convincing evidence of a clear and present danger to life  
 16 or of great bodily harm to the applicant, his spouse or  
 17 dependent child, which cannot be adequately dealt with by  
 18 existing law enforcement resources and which danger  
 19 cannot be reasonably avoided by alternative measures, and  
 20 which danger would be significantly mitigated by the  
 21 applicant's carrying of a concealed firearm. (LASD UF  
 22 7)<sup>3</sup>

23 Each CCW application is individually reviewed for cause. The LASD's definition  
 24 of good cause has been in existence since at least 2005. This definition of good

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25  
 26 <sup>3</sup>Defendant Torrance Police Department maintains a similar definition  
 27 requiring a "clear, present and documented danger to the applicant, and ... no  
 28 feasible alternative means of protection...")

1 cause, or one similar to it, is utilized by many other cities and counties within  
2 California, including San Diego.<sup>4</sup> (LASD UF 8)

3 In evaluating whether an applicant has established good cause, an applicant's  
4 stated reason of self-defense is not enough. (LASD UF 9) The applicant must  
5 demonstrate a credible threat of violence which would justify the need to possess a  
6 concealed weapon. If an applicant claims that he or she has been threatened in  
7 his/her application, the LASD looks for documentation of that threat, such as police  
8 reports or other evidence. (LASD UF 10)

9 One of the purposes for the LASD's policy is to protect against gun violence  
10 to the community at large, as well as to protect officers conducting law enforcement  
11 operations on the streets. (LASD UF 11) Gun violence is a problem throughout the  
12 State of California and Los Angeles County is no exception. The vast majority of  
13 homicides in Los Angeles County are committed with the use of guns. Handguns  
14 are of particular concern because they are much more likely to be used than  
15 shotguns and rifles. Because handguns are small, easy to conceal, and deadly at  
16 short range, they are of paramount concern and danger. Further, most of the violent  
17 acts committed in this County involving the use of guns are by gang members.  
18 (LASD UF 12)

19 The presence of more guns on the streets of Los Angeles County creates  
20 many problems for law enforcement officers. Officers are often charged with  
21 monitoring public gatherings as well as with breaking up public nuisances. Officers  
22 must act quickly whenever a disturbance occurs. Often times, this involves isolating  
23 one or two problem individuals. However, if multiple persons within a crowd are  
24 carrying concealed weapons, this creates an increased likelihood that guns will be  
25

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26 <sup>4</sup>The City of Los Angeles also maintains the same good cause requirement, as  
27 shaped by *Assenza v. City of Los Angeles*, Los Angeles Superior Court Case No. BC  
28 115813 (1994).

1 brandished or used. Thus, the increased presence of guns creates not only increased  
2 safety problems for officers but also for members of the community at large.  
3 (LASD UF 13) It is the LASD's position that increasing the numbers of concealed  
4 weapons in the community increases the threat of gun violence to the community at  
5 large, to those who use the streets and go to public accommodations, and to law  
6 enforcement officers patrolling the streets. Further, the increased presence of  
7 concealed handguns make law enforcement operations more difficult thus taking  
8 away valuable resources which would be better used conducting law enforcement  
9 operations. (LASD UF 14) Los Angeles County's good cause requirement is  
10 intended to drastically restrict the number of persons who are secretly armed in the  
11 County. (LASD UF 15) At present, there are approximately 400 concealed  
12 weapons permits that were issued by the LASD. The population of Los Angeles  
13 County was estimated to be 10,441,080 people as of January 2010. (LASD UF 16)

14 **Plaintiff's CCW Application to the LASD**

15 On or about April 7, 2011, Plaintiff submitted a CCW application to the  
16 LASD. (UF 17). In his application, Plaintiff states as justification:

17 I am a licensed California Bail Agent. I have been  
18 licensed for over three years. I am alone when I meet with  
19 co-signers and defendants at their homes in violent high  
20 crime areas within Los Angeles County such as Compton,  
21 Inglewood, Watts, and South Los Angeles as well as city  
22 and county jails to fill out paperwork and receive payment  
23 for I am called to post bail at all hours of the day and  
24 night. Often when I bail out a person I am in  
25 neighborhoods where other suspects are a danger to me. I  
26 don't know the backgrounds of clients who may be  
27 disgruntled and have a grudge against me. While in the  
28 process of my Bail Agent duties, I sometimes have in my  
possession over \$10,000 in cash.

I fear great bodily injury or death from an armed assailant  
who has the intent to steal my case of harm me. I am a  
man of small stature, and work very late hours of the  
night. The criminal element that I deal with presents a  
danger to my safety that cannot be mitigated by law  
enforcement resources or other means available to me. I  
don't have any other means of defending myself.

(LASD UF 18). The LASD reviewed Plaintiff's application and determined that he

1 failed to show good cause as required by LASD policy, and as defined above.  
2 Specifically, Plaintiff failed to show convincing evidence of a clear and present  
3 danger to life or of great bodily harm to the applicant, his spouse or dependent child,  
4 which cannot be adequately dealt with by existing law enforcement resources and  
5 which danger cannot be reasonably avoided by alternative measures, and which  
6 danger would be significantly mitigated by the applicant's carrying of a concealed  
7 firearm. (LASD UF 19).

8 Plaintiff now sues Defendants LASD and the Torrance Police Department  
9 claiming that the denial of his CCW application violates his Second Amendment  
10 right to bear arms. All parties are filing cross-motions for summary judgment.

### 11 ARGUMENT

#### 12 **I. THERE IS NO CONSTITUTIONAL RIGHT TO CARRY A LOADED** 13 **CONCEALED WEAPON IN PUBLIC UNDER THE SECOND** 14 **AMENDMENT.**

15 To prevail under 42 U.S.C. § 1983, Plaintiff must show a violation of a  
16 constitutional right. (Ninth Circuit Model Jury Inst. 9.4.) Plaintiff's lawsuit fails at  
17 the outset because there is no constitutional right to carry a loaded concealed  
18 weapon in public under the Second Amendment.

19 In *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 2788, 2822  
20 (2008), the United States Supreme Court held that the Second Amendment protects  
21 an individual's right to possess firearms in the home for self-defense and that the  
22 city's total ban on handguns, as well as its requirement that firearms in the home be  
23 kept nonfunctional even when necessary for self-defense, violated that right. In  
24 *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3026, 3044 (2010), the court  
25 evaluated restrictions similar to those in *Heller* and held that the Due Process Clause  
26 of the Fourteenth Amendment incorporates the Second Amendment right to possess  
27 a handgun in the home for self-defense.  
28

**A. The Second Amendment Does Not Include the Right to Keep and Carry a Weapon in Any Manner.**

Plaintiff argues that the decisions regarding the ability to have a weapon in one's home also establish his right to carry a concealed weapon in public. However, the law does not support his position. Since 1897, in *Robertson v. Baldwin*, 165 U.S. 275, 281-282 (1897), the Supreme Court recognized that the Second Amendment right of people to keep and bear arms is not infringed by laws prohibiting the carrying of concealed weapons. That principle has not changed. In *Heller*, the Supreme Court determined that the “core right” embodied in the Second Amendment does not include the right to keep and carry any weapon in any manner:

the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right [to keep and bear arms] was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.

*Heller*, 128 S.Ct. at 2816. While *Heller* does not specifically address concealed weapons in public, it does acknowledge that the Second Amendment right to bear arms is limited.

Thus far, no court has extended *Heller* or *McDonald* to bestow a constitutional right to carry a concealed weapon in public. See e.g., *Gamble v. United States*, 30 A.3d 161, \_\_\_ (2011 D.C. App. LEXIS 615 at \*7-8). Instead, courts have upheld prohibitions on carrying a concealed weapon in public against Second Amendment challenges. See e.g., *People v. Flores*, 169 Cal.App.4th 568, 575-576 (2008); *People v. Yarbrough*, 169 Cal.App.4th 303, 312-314 (2008). In *People v. Yarbrough*, Yarbrough was convicted of violating California Penal Code § 12025(a)(2) for carrying a concealed weapon on residential property that was fully accessible to the public. Yarbrough challenged his conviction on many grounds, including the Second Amendment. Noting that *Heller* had “specifically expressed constitutional approval of the accepted statutory proscriptions against carrying

1 concealed weapons,” the *Yarbrough* court held:

2 we find nothing in Penal Code section 12025, subdivision  
3 (a), that violates the limited right of the individual  
4 established in *Heller* to possess and carry weapons in case  
5 of confrontation. Section 12025, subdivision (a), does not  
6 broadly prohibit or even regulate the possession of a gun  
7 in the home for lawful purposes of confrontation or self-  
8 defense, as did the law declared constitutionally infirmed  
9 in *Heller*. Rather, section 12025, subdivision (a), in much  
10 more limited fashion, specifically defines as unlawful  
11 carrying concealed within a vehicle or “concealed upon his  
12 or her person any pistol, revolver, or other firearm capable  
13 of being concealed upon the person.” Further, carrying a  
14 firearm concealed on the person or in a vehicle in violation  
15 of section 12025, subdivision (a), is not in the nature of a  
16 common use of a gun for lawful purposes which the court  
17 declared to be protected by the Second Amendment in  
18 *Heller*. (See *People v. Wasley* 245 Cal.App.2d 383, 386  
19 (1966) .)

20 The *Yarbrough* court held that, unlike possession of a gun for protection within a  
21 residence, carrying a concealed firearm presents a recognized “threat to public  
22 order,” and is “prohibited as a means of preventing physical harm to persons other  
23 than the offender.” *Id.* at 314, citing *People v. Hale*, 43 Cal.App.3d 353, 356 (1974).  
24 A person who carries a concealed firearm on his person or in a vehicle, which  
25 permits the individual immediate access to the firearm but impedes others from  
26 detecting its presence, poses an ‘imminent threat to public safety. *Id.* at 313-314.

27 Similarly, in *People v. Flores*, 169 Cal.App.4th 568 (2008), the court affirmed  
28 convictions under California Penal Code sections 12025 and 12031 in the face of a  
Second Amendment challenge. With regard to the section 12031 conviction, the  
court reasoned: “there can be no claim that section 12031 in any way precludes the  
use of handguns held and used for self-defense in the home...[i]nstead, section  
12031 is narrowly tailored to reduce the incidence of unlawful public shootings,  
while at the same time respecting the need for persons to have access to firearms for  
lawful purposes, including self-defense. *Id.* at 576; see also *People v. Ellison*, 196  
Cal.App.4<sup>th</sup> 1342 (2011) (conviction of carrying concealed firearm did not violate  
Second Amendment).

1 In *Richards v. County of Yolo*, 2011 U.S. Dist. LEXIS 51906 (on appeal to 9<sup>th</sup>  
 2 Cir), plaintiffs challenged Yolo County's good cause policy after they were denied  
 3 concealed weapons permits. *Id.* at \*3-4. In granting the county's motion for  
 4 summary judgment, the court held that the Second Amendment did not create a  
 5 fundamental right to carry a concealed weapon in public. *Id.* at \*10.

6 **B. California Penal Code Section 12050's Restrictions on Concealed**  
 7 **Weapons Do Not Infringe on the Right of Self-Defense in the**  
 8 **Home.**

9 Penal Code section 12050 does not regulate the possession of a gun in the  
 10 home for lawful purposes of confrontation or self-defense, as did the law declared  
 11 unconstitutional in *Heller*. Rather, it involves the licensing of persons in the context  
 12 of the regulation of carrying concealed weapons in public places. Carrying a  
 13 firearm concealed on the person or in a vehicle is not in the nature of a common use  
 14 of a gun for lawful purposes which the court declared to be protected by the Second  
 15 Amendment in *Heller*. Unlike possession of a gun for protection within a residence,  
 16 carrying a concealed firearm presents a recognized “threat to public order,” and is  
 17 “‘prohibited as a means of preventing physical harm to persons other than the  
 18 offender.’ [Citation.]” *People v. Hale*, 43 Cal.App.3d 353, 356 (1974). A person  
 19 who carries a concealed firearm on his person or in a vehicle, “which permits him  
 20 immediate access to the firearm but impedes others from detecting its presence,  
 21 poses an ‘imminent threat to public safety ....’ [Citation.]” *People v. Hodges*, 70  
 22 Cal.App.4th 1348, 1357 (1999).

23 Here, California law does not impede the ability of individuals to defend  
 24 themselves with firearms in their homes, as set forth in *Heller*. Instead, as the  
 25 California courts recognize above, there is no right to carry a concealed weapon in  
 26 public under the Second Amendment. California’s regulation of both concealed  
 27 carry of firearms and carry of loaded firearms in public do not infringe on the  
 28 Second Amendment. Similarly, the LASD's policies and practices regarding the  
 issuance of CCW permits do not impact any recognized Second Amendment right.

1 Because Plaintiff cannot show that he was denied any constitutional right, his civil  
2 rights claim fails at the outset, and summary judgment is proper.

3 **II. THE LASD'S LICENSING PRACTICES WITHSTAND**  
4 **CONSTITUTIONAL SCRUTINY.**

5 Nonetheless, even if this Court finds that the Second Amendment is infringed,  
6 the LASD's policies and practices withstand constitutional scrutiny. The majority of  
7 courts both before and after *Heller* and *McDonald* have employed an intermediate  
8 scrutiny standard when evaluating gun regulations. See *Peruta v. County of San*  
9 *Diego*, 758 F.Supp.2d 1106 (on appeal to 9<sup>th</sup> Circuit) (citing *United States v. Skoien*,  
10 614 F.3d 638, 641 (7th Cir. 2010); *United States v. Marzzarella*, 614 F.3d 85, 97  
11 (3rd Cir. 2010); *Heller v. District of Columbia (Heller II)*, 698 F.Supp.2d 179, 188  
12 (D.D.C. 2010) (surveying the landscape of post-*Heller* decisions and joining the  
13 majority of courts in holding that intermediate scrutiny is the most appropriate  
14 standard). Intermediate scrutiny requires that the challenged statute or regulation  
15 "be substantially related to an important governmental objective." *Clark v. Jeter*,  
16 486 U.S. 456, 461 (1988).

17 The LASD's policies and practices in limiting concealed carry licensing to  
18 individuals with specifically identifiable and documented needs for concealed carry  
19 withstand intermediate scrutiny. Maintaining public safety and preventing crime are  
20 clearly important governmental interests. *Medtronic, Inc. v. Lohr*, 518 U.S. 470,  
21 475 (1996) (noting that States have "great latitude" to use their police powers);  
22 *United States v. Morrison*, 529 U.S. 598, 618 (2000) ("there is no better example of  
23 the police power than the suppression of violent crime") The regulation of  
24 concealed firearms is a critical factor in accomplishing these interests. *McDonald*,  
25 *supra*, 130 S.Ct. at 3126 ("private gun regulation is the quintessential exercise of a  
26 State's police power.")

27 Handguns are unquestionably dangerous and contribute to the majority of  
28 criminal cases that result in a person's death. LASD UF 11-15; see also *Heller*,

1 *supra*, 554 U.S. at 636 (acknowledging the problem of handgun violence in the  
 2 U.S.). A 2001 study revealed that a ten percent increase in handgun ownership  
 3 correlates with a two percent increase in homicides. *See* Michael B. de Leeuw et al.,  
 4 *Beyond the Final Frontier: a "Post-Racial" America?: The Obligations of Lawyers,*  
 5 *the Legislature, and The Court: Ready Aim, Fire? District of Columbia v. Heller*  
 6 *and Communities of Color*, 25 Harv.BlackLetter J. 133, 149 (Spring 2009).  
 7 Handgun possession is a particular problem in Los Angeles County due to the influx  
 8 of gang members in recent years. (See LASD UF 11-15.)

9 Concealed handguns, in particular pose an obvious threat to the public as a  
 10 concealed handgun generates no special notice until the weapon is brandished.  
 11 (LASD UF 11-15.) As more than 90% of police officer killings are caused by guns,  
 12 high rates of concealed gun carry especially endanger police officers. *Id.* Of the  
 13 536 law enforcement officers killed in the line of duty between 2000 and 2009  
 14 (including 47 in California), 490 were killed with firearms and of those, handguns  
 15 were used by the perpetrator 73% of the time. *See* Fed. Bureau of Investigations,  
 16 U.S. Dep't of Justice, *Law Enforcement Officers Killed and Assaulted* (2009), tables  
 17 1 and 27, *available at* <http://www.fbi.gov/about-us/cjis/ucr/leoka/2009/leoka-2009>.

18 In *Peruta*, the Southern District of California found that the San Diego Sheriff  
 19 had "an important and substantial interest in public safety and in reducing the rate of  
 20 gun use in crime;" "in reducing the number of concealed weapons in public in order  
 21 to reduce the risks to other members of the public who use the streets and go to  
 22 public accommodations;" and "in reducing the number of concealed handguns in  
 23 public because of their disproportionate involvement in life-threatening crimes of  
 24 violence, particularly in streets and other public places." *Peruta, supra*, 758  
 25 F.Supp.2d at 1117. The court also held that the Sheriff's policy which differentiated  
 26 between "individuals who have a bona fide need to carry a concealed handgun for  
 27 self-defense and individuals who do not" was reasonably related to the government's  
 28 important and substantial interest in public safety. *Id.* Accordingly, the court in

1 *Peruta* upheld the San Diego Sheriff's concealed weapon permitting policy.<sup>5</sup>

2 That interest is no different in Los Angeles County. Los Angeles County's  
3 practices in limiting CCW licenses to those with specific and documented needs is  
4 consistent with the compelling and significant legislative goals underlying Penal  
5 Code sections 12025 and 12031: the protection of the public from widespread and  
6 unchecked public carry of concealed and loaded firearms. LASD's policy creates a  
7 balance between the competing Second Amendment interests in self-defense and  
8 public safety. The LASD enables those with a clear and present need for self-  
9 defense to obtain a concealed weapon permit, so long as they also meet the  
10 requirements enumerated in California Penal Code section 12050. The LASD's  
11 policy is reasonably related to the government's important and substantial interest in  
12 public safety and concealed weapon control. Therefore, the policy withstands  
13 constitutional scrutiny.

14 Maintaining public safety and preventing crime are clearly important (if not  
15 paramount) government interests and the regulation of concealed firearms is a  
16 critical factor in accomplishing that interest. LASD UF 11-15; See, e.g., *United*  
17 *States v. Salerno*, 481 U.S. 739, 750 (1987); *Schall v. Martin*, 467 U.S. 253, 264  
18 (1984); *Kelley v. Johnson*, 425 U.S. 238, 247 (1976) ("The promotion of safety of  
19 persons and property is unquestionably at the core of the State's police power ...");  
20 *People v. Yarbrough*, *supra*, 169 Cal.App.4th at 312-314. The relevant Penal Code  
21 provisions are narrowly tailored and substantially related to furthering public safety  
22 and reducing crime. Concealed handguns are the priority of law enforcement  
23 everywhere because of the use of the concealed handgun in vast numbers of  
24 criminal offenses. (See LASD UF 11-15.) Concealed carry of handguns allows for

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26 <sup>5</sup> The *Peruta* court stated that it did not need to decide whether the Second  
27 Amendment encompasses a right to carry a loaded handgun in public, because even  
28 if it did, San Diego County's restrictions pass constitutional scrutiny.

1 stealth and surprise. Limiting the number of loaded and concealed firearms in  
 2 public places helps to keep the balance in favor of law enforcement and avoids the  
 3 necessity for every place that is open to the public – restaurants, malls, theaters,  
 4 parks, etc.-- to be equipped with metal detectors, fencing and other forms of  
 5 security, in order to protect patrons from the fear of widespread and unchecked  
 6 concealed firearms.

7 Numerous courts have discussed the need for firearm regulation and the need  
 8 for imposing restrictions on their use:

9 ...[A]ccidents with loaded guns on public streets or the  
 10 escalation of minor public altercations into gun battles or,  
 11 as the legislature pointed out, the danger of a police officer  
 12 stopping a car with a loaded weapon on the passenger seat.  
 13 ... [T]hus, otherwise “innocent” motivations may  
 14 transform into culpable conduct because of the  
 15 accessibility of weapons as an outlet for subsequently  
 16 kindled aggression. ... [T]he underlying activity of  
 17 possessing or transporting an accessible and loaded  
 18 weapon is itself dangerous and undesirable, regardless of  
 19 the intent of the bearer since it may lead to the  
 20 endangerment of public safety. ... [A]ccess to a loaded  
 21 weapon on a public street creates a volatile situation  
 22 vulnerable to spontaneous lethal aggression in the event of  
 23 road rage or any other disagreement or dispute. The  
 24 prevention of the potential metamorphosis of such  
 25 “innocent” behavior into criminal conduct is rationally  
 26 related to the purpose of the statute, which is to enhance  
 27 public safety. Because the legislature has a compelling  
 28 interest in preventing the possession of guns in public  
 under any such circumstances, the statute is reasonably  
 related to the legislature’s purpose of “mak[ing]  
 communities in this state safer and more secure for their  
 inhabitants.”

22 *People v. Marin*, 795 N.E.2d 953, 958–59 (Ill. App. 2003) (citations omitted); see  
 23 also *Marshall v. Walker*, 958 F.Supp. 359, 365 (N.D. Ill. 1997) (individuals should  
 24 be able to walk in public “without apprehension of or danger from violence which  
 25 develops from unauthorized carrying of firearms and the policy of the statute to  
 26 conserve and maintain public peace on sidewalks and streets within the cities ...”)  
 27 (quoting *People v. West*, 422 N.E.2d 943, 945 (Ill.App. 1981)).

28 For these reasons, the LASD's policies would withstand any level of

1 constitutional scrutiny. Strict scrutiny requires that a statute or regulation “be  
 2 narrowly tailored to serve a compelling governmental interest” in order to survive a  
 3 constitutional challenge. *Abrams v. Johnson*, 521 U.S. 74, 91 (1997). Finally, a  
 4 statute or regulation survives an “undue burden” analysis where it does not have the  
 5 “purpose or effect [of] plac[ing] a substantial obstacle in the path” of the  
 6 individual seeking to engage in constitutionally protected conduct. *Gonzales v.*  
 7 *Carhart*, 550 U.S. 124, 146 (2007) (quoting *Planned Parenthood of Southeastern*  
 8 *Penn. v. Casey*, 505 U.S. 833, 878 (1992)). The LASD's policy to limit CCW  
 9 licenses to those with specific and documented needs is consistent with the  
 10 compelling and significant legislative goals underlying sections 12025 and 12031,  
 11 i.e. the protection of the general public from widespread and unchecked public carry  
 12 of concealed and loaded firearms. There is a “compelling state interest in protecting  
 13 the public from the hazards involved with certain types of weapons, such as guns.”  
 14 *State v. Cole*, 665 N.W.2d 328, 344 (2003).

### 15 **III. THE LASD DID NOT IMPROPERLY DENY PLAINTIFF'S** 16 **APPLICATION.**

17 LASD's policy was also constitutionally applied to Plaintiff. Plaintiff's  
 18 application was reviewed like every other application and underwent the same  
 19 evaluation every other application did. (LASD UF 8, 17-19.) Plaintiff's application  
 20 was denied because he did not present evidence of a clear and present danger, as  
 21 required by the policy. (LASD UF 8, 17-19.) As such, summary judgment is  
 22 appropriate.

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1  
2 **CONCLUSION**

3 For the foregoing reasons, the LASD asks that the Court grant its Motion, and  
4 denies Plaintiff's Motion for Summary Judgment.

5 DATED: December 22, 2011

6 Respectfully submitted,

7 ANDREA SHERIDAN ORDIN  
8 County Counsel

9  
10 By

11   
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Principal Deputy County Counsel

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